

**United States District Court, Northern District of Illinois**

Name of Assigned Judge or Magistrate Judge	Elaine E. Bucklo	Sitting Judge if Other than Assigned Judge	
CASE NUMBER	02 C 8136	DATE	8/7/2003
CASE TITLE	Cross vs. Risk Management Alternatives, Inc.		

**MOTION:** [In the following box (a) indicate the party filing the motion, e.g., plaintiff, defendant, 3rd party plaintiff, and (b) state briefly the nature of the motion being presented.]

## MOTION:

10. The following table summarizes the results of the study.

**DOCKET ENTRY:**

- (1)  Filed motion of [ use listing in "Motion" box above.]

(2)  Brief in support of motion due \_\_\_\_\_.

(3)  Answer brief to motion due \_\_\_\_\_. Reply to answer brief due \_\_\_\_\_.

(4)  Ruling/Hearing on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(5)  Status hearing[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(6)  Pretrial conference[held/continued to] [set for/re-set for] on \_\_\_\_\_ set for \_\_\_\_\_ at \_\_\_\_\_.

(7)  Trial[set for/re-set for] on \_\_\_\_\_ at \_\_\_\_\_.

(8)  [Bench/Jury trial] [Hearing] held/continued to \_\_\_\_\_ at \_\_\_\_\_.

(9)  This case is dismissed [with/without] prejudice and without costs[by/agreement/pursuant to]  
 FRCP4(m)    Local Rule 41.1    FRCP41(a)(1)    FRCP41(a)(2).

(10)  [Other docket entry] Defendant's renewed motion for judgment on the pleadings is granted and the case is dismissed. Any pending motion in this case is terminated as moot. Enter Memorandum Opinion and Order.

(11)  [For further detail see order attached to the original minute order.]

	No notices required, advised in open court.		Document Number
	No notices required.	3 number of notices	
<input checked="" type="checkbox"/>	Notices mailed by judge's staff.	AUG 08 2003 date docketed	
	Notified counsel by telephone.	98 docketing deputy initials	
	Docketing to mail notices.	26 8/7/2003 date mailed notice	
<input checked="" type="checkbox"/>	Mail AO 450 form.	MPJ mailing deputy initials	
	Copy to judge/magistrate judge.		
MPJ		courtroom deputy's initials	

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

JENNIFER J. CROSS, )  
Plaintiff, )  
v. )  
RISK MANAGEMENT ALTERNATIVES, INC., )  
Defendant. )  
No. 02 C 8136

DOCKETED  
AUG 08 2003

MEMORANDUM OPINION AND ORDER

Plaintiff Jennifer J. Cross filed a Chapter 7 petition for bankruptcy on March 22, 2002. Ms. Cross' creditors were notified of this proceeding, which resulted in a discharge of Ms. Cross' debts on July 8, 2002. On June 24, 2002, while the bankruptcy was pending, defendant Risk Management Alternatives, Incorporated ("RMA"), which represented one of Ms. Cross' creditors, sent Ms. Cross a letter, seeking to collect a discharged debt. On November 12, 2002, Ms. Cross filed this case, alleging that RMA's letter violated the Fair Debt Collection Practices Act ("FDCPA"), 15 U.S.C. § 1692 et. seq. Specifically, Ms. Cross alleged that RMA's attempt to collect a discharged debt was false, deceptive or misleading, and unfair or unconscionable, in violation of §§ 1692e and f of the FDCPA, and that in sending the letter directly to Ms. Cross rather than to her counsel, RMA violated § 1692c(a)(2) of the FDCPA. RMA now moves for judgment on the pleadings pursuant to Rule 12(c) on the grounds that this action should have been brought in

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the bankruptcy court as a contempt action for RMA's violation of the automatic stay. I grant the motion.

A motion for judgment on the pleadings is subject to the same standard as a motion to dismiss for failure to state a claim under Rule 12(b)(6), and thus "should not be granted unless it appears beyond doubt that the plaintiff cannot prove any facts that would support his claim for relief." *Thomason v. Nachtrieb*, 888 F.2d 1202, 1204 (7th Cir. 1989).

The facts in this case are virtually identical to those of *Randolph v. IMBS, Inc.*, No. 02 C 6368, 2003 U.S. Dist. LEXIS 1654 (N.D. Ill. Feb. 4, 2003) (Bucklo, J.). In *Randolph*, as here, the defendant attempted to collect an unpaid debt which was discharged in a Chapter 7 bankruptcy proceeding. The plaintiff filed suit in this court under the FDCPA. I granted the defendant creditor's motion to dismiss on the grounds that a remedy for actions which violate the automatic stay must be brought in bankruptcy court.

Ms. Cross urges me to reconsider the holding in *Randolph*, pointing out that Judge Kennelly has taken the opposite view. See *Hyman v. Tate & Kirlin*, No. 02 C 242, 2003 U.S. Dist. LEXIS 4822 (N.D. Ill. Mar. 26, 2003) (Kennelly, J.). However, as I discussed in *Randolph*, while it is clear that such an aggrieved debtor such as Ms. Cross may seek a remedy in bankruptcy court, the Seventh Circuit has not ruled on the question of whether he or she has an

additional remedy under the FDCPA in district court, and district court authority is deeply divided.

The most informative Seventh Circuit opinion in this area remains *Cox v. Zale Delaware Inc.*, 239 F.3d 910 (7th Cir. 2001). In *Cox*, the Seventh Circuit held that a suit for violation of section 524(c) of the Bankruptcy Code, which requires debt reaffirmation agreements to be filed with the bankruptcy court, may be brought only as a contempt action, "since the debtor would be seeking to enforce the order of discharge issued in that [bankruptcy] proceeding." *Id.* at 917. I read this as an indication of the circuit's preference for efficient resolution of discharge-related claims in one forum.

Ms. Cross suggests that to deny her the opportunity to pursue her claim in this court would contravene the principle that where two federal statutes address the same subject, courts should give effect to both. *Peeples v. Blatt*, No. 00 C 7028, 2001 U.S. Dist. LEXIS 11689, at \*13 (N.D. Ill. Aug. 14, 2001) (Gottschall, J.) (holding that a bankruptcy debtor subjected to collection attempts has a right of action under both the Bankruptcy Code and the FDCPA). While I recognize that principle, it must be weighed against the expressed goal of the Bankruptcy Code to provide a comprehensive enforcement scheme in bankruptcy cases. See *Bolen v. Bass*, No. 97 C 3944, 2001 U.S. Dist. LEXIS 16964, at \*15 (N.D. Ill. Oct. 18, 2001) (Lefkow, J.) (holding that the exclusive remedy for

attempts to collect discharged debts is a contempt action in bankruptcy court); see also *Wehrheim v. Secrest*, No. 00-1328, 2002 U.S. Dist. LEXIS 19020, at \*19 (S.D. Ind. Aug. 16, 2002) (holding that Cox precludes suits under the FDCPA that might have been brought as a contempt proceeding in bankruptcy court).

I stand by my reasoning in Randolph, and hold that Ms. Cross cannot sustain this action under the FDCPA. Any remedy for a creditor's collection actions during a pending bankruptcy should be provided by the bankruptcy court. The motion for judgment on the pleadings is GRANTED.

ENTER ORDER:

  
\_\_\_\_\_  
Elaine E. Bucklo  
United States District Judge

Dated: August 7, 2003